

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 502/2012 & WP(C) No. 7562/2012

% **1st November, 2013**

+ W.P.(C) 502/2012 (item no.18)

BIRPAL SINGH

..... Petitioner

Through: Mr. M.G.Kapoor, Adv.

Versus

LT. GOVERNOR (ADMINISTRATOR) DELHI AND ORS

.....Respondents

Through: Mr. Sanjeev Sahay and Mr. Jhum
Jhum Sarkar, Advocates for R-
2/DOE.

Mr. K.K.Sharma, Sr. Adv. with Mr.
Rajiv Bakshi and Ms. Bh anita
Patowary, Advocates for R-4.

+ W.P.(C) 7562/2012 (item no.19)

BINU CHAUDHARY

..... Petitioner

Through: Mr. K.K.Sharma, Sr. Adv. with Mr.
Rajiv Bakshi and Ms. Bhanita
Patowary, Advocates.

versus

LT. GOVERNOR OF DELHI (ADMIN.) & ORS

..... Respondents

Through: Ms. Zubeda Begum, Standing counsel
of GNCTD with Ms. Sana Ansari,
Advocate for R-1 and 2.

Mr. M.G.Kapoor, Advocate for
applicant/non-petitioner.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. Both these writ petitions are being disposed of by this common judgment inasmuch as effectively one is counter to other, i.e either the petitioner-Ms. Binu Chaudhary in WP(C) No. 7562/2012 succeeds in her claim for continuation to the post of vice-principal pursuant to her appointment by the DPC of the school (Nutan Marathi Senior Secondary School) dated 27.1.2012 or Ms. Binu Chaudhary's claim will be dismissed as those minutes of the DPC will be illegal, and as so stated by the Director of Education in its communications including the last communication dated 16.11.2012 (and which is impugned by the petitioner in W.P.(C) No. 7562/2012). This order dated 16.11.2012 of the Director of Education reads as under:-

“No. F/28/2012/Aided/09/1980-1989
ORDER

Dated: 16.11.12

Promotion and Appointment of Ms. Binu Chaudhary, PGT to the post of Vice Principal in Nutan Marathi Sr. Sec. School, Pahar Ganj, New Delhi not being in accordance with the Recruitment Rule and being in the violation of Rule 97 of DSEAR 1973 is hereby rejected with retrospective effective from the date of her joining.

This issues with prior approval of Worthy Director of Education vide U.O. No. 10550/DE dated 14/11/2012

Review DPC be conducted to fill up the post.

**D.D.E.(C/ND)
Plot No.5, Jhandewalan”**

2. Petitioner in W.P.(C) No. 502/2012 Sh. Birpal Singh was one other candidate who was considered in DPC meeting of the school dated 27.1.2012, but Ms. Binu Chaudhary, the petitioner in W.P.(C) No. 7562/2012 was preferred over him.

3. At this stage, it would be also useful to refer to the Minutes of the DPC Meeting dated 27.1.2012, inasmuch as certain arguments have been addressed in this regard by the counsel appearing for Ms. Binu Chaudhary the petitioner in W.P.(C) No. 7562/2012, and accordingly, the same is reproduced as under:-

MINUTES OF THE D.P.C.MEETING HELD ON 27.01.2012 IN THE SOCIETY'S OFFICE TO FILL THE VACANT POST OF VICE PRINCIPAL IN THE SCHOOL.

A meeting of D.P.C. constituted vide letter No. z-28/2011/461 dated 14.07.2011 was held on 27th January, 2012 at 12.30 P.M. in the Society's Office to fill the vacant post of Vice Principal fell vacant due to promotion of Sh. S.K.Sharma, Vice Principal on 10.12.2009. The Departmental Promotion Committee was conducted on the basis of 2009-10 since, the post of Vice Principal fell vacant.

The meeting was presided over by Dr. S.P.Gawande, Chairman School Management Committee.

The following members were on the panel of D.P.C. meeting:-

1. Dr. S.P.Gawande, Chairman, DME&CS
2. Mr. S.C.Gupta, Asstt. Director of Education (Estate) D.E.Nominee
3. Mr. S.K.Mimmi, Dy. Education Officer, Zone-28.
4. Mr. R.P.S.Gautam, Principal, S.B.V., Pahar Ganj, New Delhi (H.O.S)
5. Smt. Rani Devi, Principal, S.K.V.Zeenat Mahal, No. 1, Kamla Mkt. N.D.(Subject Expert)
6. Mr. V.G.Mantute, General Secretary, DME&CS
7. Dr. Makrand Joshi, Education Secretary, DME&CS

D.P.C. considered the names of the following eligible candidates under zone of consideration.

1. Ms. Binu Chaudhary, P.G.T. (Painting)
2. Mr. Birpal Singh, P.G.T.(Maths)
3. Mrs. Shubhanda Bapat, P.G.T.(Hindi)
4. Mr. Gulshan Nagpal, P.G.T.(Physics)
5. Mrs. Aruna Pathak, P.G.T.(Biology)

The Committee reviewed Seniority List, Five Year A.C.R's, Result, Work and conduct report, integrity Certificate, Extra Ordinary Leaves Certificates required for promotion of the eligible candidates and found no court case/vigilance case pending against candidates/post in the school.

The society received W.P.(C) No. 502/2012 & C.M. No. 1064 in W.P.(C) No. 502/2012-Birpal Singh Vs. Lt. Governor (Administrator), Delhi & Others in Hon'ble High Court of Delhi at New Delhi, approved by the Hon'ble High Court asking to reply the petition by 17th July, 2012. Accordingly, reply will be sent to the Hon'ble High Court and directed by The Directorate of Education in Post fixation Sanction letter No. DE.22/11/PFC/Aided/2009-10/969-972 dated 25.06.2010, the post of Vice Principal was abolished. However, the post was allowed/restored with restrospective effect, i.e. 2009-10 Vide Post Fixation Sanction letter No. DE.22/11/PFC/Aided/2009-10/70-75 dated 21.03.2011.

The School Management Committee meeting held on 21.01.2012 also resolved that recruitment rules for the post of Vice Principal were relaxed as per the Recruitment Rules of the Directorate of Education in the case of candidate belonging to the same school i.e. B.Ed. Degree. After

evaluating the A.C.R.'s and overall performance of all the five candidates recommend the name of Miss Bindu Choudhary for the post of Vice Principal in the Nutan Marathi Senior Secondary School, Pahar Ganj, New Delhi-110055. No Financial Benefit will be allowed for the selected candidate till the date of joining.”

4. The issue in the present case turns upon entitlement for appointment as a vice-principal of the school, and the eligibility criteria with respect thereto. The eligibility criteria which is in issue is of whether there is required or not a qualification of B.Ed degree for being appointed as a vice principal. Whereas petitioner in W.P.(C) No. 7562/2012 Ms. Binu Chaudhary states that this qualification is not required, however, the Director of Education as also the petitioner in W.P.(C) No. 502/2012 Sh. Birpal Singh states that it is required.

5. I may also state that the eligibility criteria for appointment as vice-principal of the school has to be seen in terms of the letter of the Director of Education dated 16.5.2011 as of December, 2009, and which position as of today is final. This letter of the Director of Education dated 16.5.2011 reads as under:-

**“OFFICE OF THE D.D.E., DISTRICT CENTRAL/NEW
DELHI PLOT NO.5, JHANDEWALAN, NEW DELHI**

Ref. No.Z/28/2011/Aided/NM-2/278

Dated: 16-05-2011

To,

**The Chairman/Manager/HOS,
Nutan Marathi, Senior Secondary, School,
Pahar Ganj, New Delhi-110055.**

Subject: D.P.C. for the post of Vice Principal

Sir,

Please refer our letter vide No.Z-28/252 dated 4-05-2011 in reference to representation of Shri Birpal Singh. The Management of your school has failed to give any reply explaining the ground and reasons for non conduction of D.P.C for the post of Vice Principal since December, 2009 when the post fell vacant, despite several representation of Shri Birpal Singh continuously since December, 2009 as per rule enclosed.

It is apparent that Management has not only ignored the disposal of representation of Shri Birpal Singh since December 2009 but also the Management has failed to fulfill the claim of employees and violated the Rule 64(1) (i) and 64(1) (g) of D.S.E.A.R 1973 which further constraint to invoke action against Management which may be reduction of Grant-in-Aid as per Proviso of D.S.E.A.R'1973.

Now therefore the Management of Nutan Marathi Senior Secondary School is hereby directed to conduct the D.P.C for the post of Vice-Principal w.e.f. December, 2009 to avoid further contravention of Rule 64(1)(i) and 64(1) (g) and nullify the grievances of employees in terms of embarrassment/harassment.

It is issued as per approval of D.D.E (C & N.D). With issuance of this letter all the representations of Shri Birpal Singh stand disposed of.

Sd/-

Education Officer”

6(i) Therefore, let us now examine that whether there was the requirement/eligibility criteria of having a B.Ed degree for being appointed to the post of vice-principal in the school as in December, 2009. I may put on record at this stage that the school is an aided school i.e 95% of the finances of the school are provided by the Govt. of NCT of Delhi through the Director of Education.

(ii) There are a total of four statutory notifications of the Director of Education which have been relied upon by the respective parties and therefore I am reproducing the relevant portions of each of them hereinafter. The first notification in this regard of the Director of Education is dated 19.4.1977. The second is dated 7.4.1980. The third is dated 29.1.1991, and the fourth is dated 19.2.1991.

7(i) The relevant portion of the notification dated 19.4.1977 with respect to the appointment of vice-principal reads as under:-

1	2	3	4	5	6	7
2.(i)	Vice III	General	650-30-740-35-810	Selection	Not	Applica
Principal.		Central	EB 35-880-40-		applicable	ble
Govt. Hr.		Services	1000-EB 40-1200			
Secondary		Group 'B'				
Schools		Gazetted				
Male-48						
Female-53						

(ii) Vice
Principal,
Teachers
Training
Institute for
Male
Candidates-
One Post.

(iii)
Headmaster,
Government
Adult(Eveni
ng) Schools;
for Male
Candidates-
9 Posts

Note: Male
or female
candidates
will be
considered
for
appointment
to the posts
meant for
such
candidates
only.

8	9	10	11	12	13
Not applicable	2 years	By promotion	Promotion: 1.(a) Post Graduate Teachers (Special Cadre.) (b) Post Graduate Teachers (Administration Cadre). 2.Headmasters, Middle Schools. 3.Assistant District Inspectors of Schools. 4. Assistant Social Education Officers with 5 years' regular service in the respective grade and holding Master's Degree of a recognized University or equivalent. Note: The promotion quota for promotion to the post of Vice Principal etc. from	Group 'B' D.P.C. (The seniormost officer will preside over the DPC and the remaining will be Members): (i) Finance Secretary, Delhi Administration, Delhi. (ii) Administrative Secretary or Labour Commissioner, or both. (iii) Shri s. Mulaichamy, Joint Director Transport., Delhi Admn. Delhi. (iv) Deputy Secretary (Service), Delhi Admn. Delhi	Consultatio n with the U.P.S.C not necessary unless it is intended to relax, at any time, the provisions of the recruitment rules.

Post Graduate Teachers (Special Cadre) and Head-masters, Middle Schools vis-a vis Post-graduate Teachers (Administration Cadre) will be fixed proportionately as calculated on the last day of the last academic session.

(ii) The relevant portion of the notification dated 7.4.1980 with respect to appointment of a vice –principal reads as under:-

Name of the post	Scale of pay	Whether Selection post or non-selection	Age limit for direct recruits	Educational Qualifications
1	2	3	4	5
Vice Principal	Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200	Selection	(a) Not exceeding 45 years (relaxable by 5 years for a candidate belonging to Scheduled Caste/Scheduled Tribes. Age relaxable in case of the candidates belonging to the same school	Essential:- (a) Master's Degree with at least second Division from a recognized University or equivalent. (b) Degree in Teaching/Education from a recognised University or equivalent. (c) 10 years experience of teaching as TGT or 5 years experience of teaching as PGT. *Condition of second division relaxable in case of candidates belonging to the same school and also in case of Scheduled Caste/Scheduled Tribes Desirable: (i) <i>Experience in administrative</i> charge of a recognised High/Hr. Sec. School/Intermediate College. (ii) Doctorate Degree- (iii) M.Ed. Degree from a recognised University.

(iii) The notification dated 29.1.1991 reads as under:-

R.R.for the post of Vice-Principal
Notification F.32/1/84/Gen./78-80/3721-4161, dt.25-02-1980 and
Amended Vide No.F.32/1/84/Gen./91/98-400, dt. 29-01-1991

1.Name of the post	: Vice-Principal
2. Scale of Pay	: Rs.650-30-740-35-810 EB 35-880-40-1000 EB-40-1200(Pre-revised)Rs.7,500-12,000 (Revised as per V C.P.C)
3. Whether selection post or non-selection	: Selection
4. Age limit for direct recruitment	: (a) Not exceeding 45 years relaxable by 5 years for a candidate belonging to Scheduled Caste/Scheduled Tribes. (b) Age relaxable in case of the candidate belonging to the same school. Note: The crucial date for determining the age limit shall be the closing date for receipt of application from the candidates.
5.Educational Qualification	: (a) Master Degree with at least IInd Division from a recognised University or equivalent. Condition of second division relaxable in the case of candidates belonging to the same school and also in case of Scheduled Castes, Scheduled Tribes (b) Degree in Teaching/Education from a Recognised University or equivalent. (c) 10 years experience of teaching as TGT or 5 years experience of teaching as PGT. Desirables: (i) Experience in Administrative charge of a recognised High/Hr. Sec. School, Intermediate College. (ii) Doctorate degree. (iii) M.Ed. degree from a recognised University.
6. Whether age and educational qualifications prescribed for direct recruits will be apply in the case of promotion.	: (i) Age: No. Qualification: Yes except/indicated in as Col. No.5 Note: Competent Authority may relax any of the essential qualifications in case of candidate belonging to the same school after recording reasons therefore.
7. Period of probation if any	: One year
8. Method of recruitment	: By promotion failing which by direct recruitment.
9. In case of promotion/deputation/transfer grades from which deputation/promotion to be made.	: Promotion out of (i) PGT/HM of the same school will at least 5 years experience as PGT/HM. (ii) PGT with at least 10 years experience as TGT in case of Secondary Schools.
10. If a Selection committee exists, what is its composition	: The Selection Committee as prescribed under the Delhi School Education Act & Rules.

(iv) The relevant portion of the notification dated 19.2.1991 reads as under:-

“No.F.27(7)/88-Edn./295-In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, read with the Government of India, Ministry of Home Affairs, Notification No. F.24/78/68-DH(S), dated 24-9-1968, the Administrator of the Union Territory of Delhi, after previous consultation with the Union Public Service Commission, New Delhi, is pleased to make the following amendments in the Schedule annexed to this Administration Notification No. F 2(6)/70-S.II/Part dated 20th April, 1977, containing the rules regarding the method of recruitment and qualification necessary for appointment to the post of (i) Vice-Principal, Government Higher Secondary Schools(Male or Female), (ii) Vice-Principal, Teachers Training Institutes (for Male candidates) (iii) Head Master, Government Adult (Evening) Schools (for male candidates) in the Directorate of Education, Delhi Administration, Delhi, namely:-

AMENDMENT

In the said Schedule, for the existing entries under columns 1(Name of post), 2(No. of post), 3 (Classification), 4(Scale of Pay). 7(Whether benefit of added year of service admissible under rule 30) of the C.C.S (Pension) Rules, 1972, 12(In case of rectt. By promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made) and 13(If a DPC exists, what is its composition, the following shall be substituted, namely:-

“Column 1-(i) Vice-Principal, Government and Senior Secondary Schools, Male-337. Female-315.

(ii) Vice-Principal, Teachers Training Institute (For Males-1).

(iii) Headmaster. Government Adult (Evening) Schools (For Male-12).

Column 1-665. (1990) Subject to variation dependent on work load.

Column 3-GCS Group ‘B’ Gazetted Non-Ministerial.

Column 4- Rs.2000-60-2300-75-2375-EB-75-2825-EB 75-3200-3300-EB-100-3500.

Column 7.- Not applicable

Column 12- Promotion:

1. (a) Post Graduation Teachers(Spl. Cadre) excluding PGT Physical Education: or

(b) Post Graduate Teachers (Admn. Cadre) excluding PGT Physical Education: or

(c) Post-Graduate Teachers (Tech. Education) or

2. Head Master, Middle Schools.

with 3 years regular service in the posts under the Delhi Administration and possession at least :Master's Degree from a recognised University or equivalent.

Column 13-Group 'B' D.P.C (for promotion)

The senior most officers will preside over the DPC and the remaining will be Members):

- (i) Finance Secretary, Delhi Administration, Delhi.
- (ii) Administrative Secretary or Labour Commissioner or both.
- (iii) Joint Director (Transport), Delhi Administration , Delhi.
- (iv) Dy. Secretary (Transport), Delhi Administration Delhi.”

8. On behalf of Ms. Binu Chaudhary, petitioner in W.P.(C) No. 7562/2012, the following arguments are urged before this Court:-

(i) In view of the recommendation of the DPC of the school dated 27.1.2012, Ms. Binu Chaudhary gets a right to be appointed and to continue as a vice-principal of the school as per Rule 97 of the Delhi School Education Rules, 1973 and the judgment of a Division Bench of this Court in the case of *Chandra Mohan Gururani Vs. Director of Education & Ors. 137(2007) DLT 323 (DB)*. It is argued further as regards this aspect that presence of the nominee of the Director of Education in the DPC dated 27.1.2012 has the effect of granting deemed relaxation/approval under Rule 97 of the Director of Education.

(ii) The circular of 29.1.1991 is argued to be applicable, and which, does not require the eligibility criteria of a B.Ed degree for appointment to a post of vice-principal. The notification dated 19.2.1991 is argued to be applicable not only as providing for qualifications for appointment to the post of vice-principal in government schools, but also for each and every senior secondary school including aided schools, and therefore it is argued that no requirement exists of a person to have B.Ed qualification for being appointed as a vice-principal as per this notification.

(iii) As per Rule 100(c) read with Rule 102 of the Delhi Education Rules, 1973, what are the requirements for appointment as a vice-principal in the government schools will apply to appointment to the post of vice-principal even in schools which are not government schools but are aided schools such as the subject school.

(iv) Ms. Binu Chaudhary in the year 2010, and before conduct of the DPC on 27.1.2012, had already obtained B.Ed degree and therefore, it cannot be said that she was not eligible for being appointed as a vice-principal.

(v) It is argued that Ms. Binu Chaudhary cannot be prejudiced at her advanced stage of her career because when she was appointed as PGT

(Painting), on the date of her appointment as PGT, there was no requirement that she should have a B.Ed degree for being appointed as a PGT.

9. On behalf of the petitioner, in W.P.(C) No. 502/2012 the aforesaid arguments are rebutted, and his stand is supported by similar arguments urged on behalf of the Director of Education, and both of whom pray for dismissal of the writ petition of Ms. Binu Chaudhary and for upholding the communications of the Director of Education ending with the communication dated 16.11.2012 rejecting with retrospective effect the appointment of Ms. Binu Chaudhary as vice-principal of the school.

10. In my opinion, the arguments urged on behalf of the petitioner in W.P(C) No. 7562/2012 namely Ms. Binu Chaudhary carry no weight and the writ petition filed by her is liable to be dismissed. The petition of Sh. Birpal Singh is allowed to the extent stated hereinafter. I would now take up each of the arguments urged on Ms. Binu Chaudhary's behalf and deal with the same alongwith the responses given to the same by the counsels for Mr. Birpal Singh and the Director of Education.

11(i). The first argument urged on behalf of Ms. Binu Chaudhary was that she by virtue of the ratio in *Chandra Mohan's case (supra)* taken with the recommendations of DPC meeting dated 27.1.2012 would stand

appointed as the vice-principal by giving of deemed relaxation by the Director of Education in terms of Rule 97. This argument in my opinion does not have any merit because the facts of *Chandra Mohan's case (supra)* show that all that was observed and held in the said judgment was that a person who is not eligible can be considered by the selection committee of the school, and it is wrong for a single judge of this Court to deny to a candidate consideration by a DPC for appointment inasmuch as the Director of Education can always in terms of Rule 97 subsequently grant relaxation. In the facts of the present case, however, those observations in *Chandra Mohan's case (supra)* cannot apply for two main reasons. Firstly, the DPC dated 27.1.2012 did not select Ms. Binu Chaudhary as vice-principal and thereafter recommended for relaxation in the qualification criteria so far as Ms. Binu Chaudhary not having B.Ed qualification and in fact DPC incorporated the relevant notifications of Director of Education to say that qualification of B.Ed degree was not required. This understanding of the DPC is legally incorrect and the reasons for the same will be given hereinafter.

(ii) The second reason is that even assuming that DPC recommended that relaxation be given so far as Ms. Binu Chaudhary is concerned, however, consistent stand of the Director of Education with WPC 502/2012 & 7562/2012

respect to its various communications over different periods and of many years is that appointment of Ms. Binu Chaudhary to the post of vice-principal is bad in view of the applicable notifications and thus effectively denying any relaxation of not having B.Ed degree by Ms. Binu Chaudhary. I have already referred to the various communications in this regard by the Director of Education to the school rejecting the stand of the school for appointing Ms. Binu Chaudhary as vice-principal and which ended with the order dated 16.11.2012 which has been reproduced above. Therefore, in my opinion, it is not permissible on behalf of Ms. Binu Chaudhary to urge that ratio of *Chandra Mohan's case (supra)* supports her or that there should be deemed approval by virtue of Rule 97 in the facts of the present case. I may also note that even by the plain language of Rule 97 there is no question of deemed approval of relaxation being granted merely and simply because of presence of Director of Education's nominee, and in fact specific approval is required by the Director of Education as per the language of Rule 97 and I thus refuse to interpret Rule 97 as entitling a deemed approval by simple presence of the Director of Education in the DPC because after all we are concerned of standards of education in schools and standards of education will have a direct bearing with the qualification criteria of appointment of

teachers including vice-principal in this case. Accordingly, the first argument urged on behalf of Ms. Binu Chaudhary is rejected.

12. The second, third and fourth arguments urged on behalf of Ms. Binu Chaudhary can be taken together because they require interpretation of the four notifications which have been reproduced above alongwith the Rules 100(c) and 102 of the Delhi School Education Rules, 1973.

13. On behalf of Ms. Binu Chaudhary, the notification dated 29.1.1991 which is filed and relied upon cannot be relied upon for the simple reason that the same contains a typing mistake and gives a wrong impression as if the requirement of B.Ed qualification is not required for appointment of vice-principal. The correct notification dated 29.1.1991 has been filed on behalf of the Director of Education, and which I have reproduced above. When we see this correct notification dated 29.1.1991, it is shown that appointment to the post of vice-principal is by selection and as per para 5(b) a B.Ed degree is a necessary educational qualification which is required for being appointed as the vice-principal. Even with respect to promotion to the post of vice-principal as per para-6 of the notification dated 29.1.1991, the age criteria has only been exempted but other qualifications are required and which are specified in column 5 of the notification dated 29.1.1991 and

which column 5(b) as already stated requires B.Ed qualification for being appointed as the vice-principal. Any doubt in this regard is also removed when we refer to the corresponding paras of the Hindi language notification dated 21.1.1991 and which makes it clear that for the promotion post of a vice-principal the candidate must have the qualifications stated in para 5 of the notification. I therefore, cannot agree with the arguments urged on behalf of Ms. Binu Chaudhary that there is no requirement of B.Ed qualification for being appointed as a vice-principal in terms of this notification dated 29.1.1991. It may also be stated that reliance placed on behalf of Ms. Binu Chaudhary upon column 9 of the notification that the same entitles a person to be appointed as a vice-principal without B.Ed degree is an argument without merit because column 9 does not deal with qualifications required for the post of a vice-principal and it only provides the grade from which promotion is to be made. The required grade is of PGT/HM for promotion to the post of vice-principal and this column 9 hence cannot be said to be concerned with qualifications and which are the subject matter of column 5. What should be the feeder cadre or the grade is a subject matter totally different from the educational qualifications which are required for being appointed to the post of vice-principal. The argument urged on behalf of Ms. Binu Chauhary that the notification dated 29.1.1991

does not require a B.Ed degree is thus rejected, and in fact an observation is made that both the counsels as also the parties must be careful while giving typed copies to the Court and the counsels must take pain to ensure that unintentional or negligent typing mistakes do not occur.

14. So far as the argument urged on behalf of Ms. Binu Chaudhary that as per column 1 of the notification dated 19.2.1991 is concerned, the appointment as vice principal is mentioned with respect to all vice-principals whether of government schools or all other senior secondary schools including aided schools, this argument once again is absolutely hollow for two reasons. Firstly, this notification dated 20.4.1977 is for making amendments to the notification dated 20.4.1977 and which notification is only for appointment of vice-principal in government senior secondary schools. Therefore an amendment notification has necessarily to be of the same subject matter as of the main notification and since the main notification is for appointment of vice-principal in government higher secondary schools, the notification dated 19.2.1991 also has to be read as being applicable not to aided schools but only to government schools. Further, in this regard I agree with the arguments urged on behalf of counsel for Director of education that even the language of column 1 of the

notification dated 19.2.1991 basically is with respect to the fact that reference in the same is to government schools up to the senior secondary school's levels and the language of the notification 19.2.1991 is not for the purpose of applying the same to the government schools and every other aided or unaided private senior secondary schools.

15. The first notification dated 19.4.1977 is with respect to appointment of vice-principals and the qualifications which were required of vice-principals were those as per the second notification dated 7.4.1980 and which applied specifically to all re-cognized private schools. Therefore, this last notification would apply to the school in question which is an aided school. Accordingly, I hold that the notifications which will apply in these cases are notifications dated 7.4.1980 and 29.1.1991 and not the notifications dated 19.2.1991 and the wrongly typed copy of the notification dated 29.1.1991 relied upon on behalf of Ms. Binu Chaudhary.

16. The arguments urged on behalf of Ms. Binu Chaudhary by placing reliance on Rules 100(c) and 102 again have no substance for the reason that those very rules specify that the criteria as specified in those rules can be changed by appropriate statutory notifications. In this case the appropriate statutory notifications have been issued and therefore, the provision of Rule 100(c) that qualifications of appointment with respect to

vice-principal in the government schools should be the same as a government aided school is therefore not a correct argument. After all, specific statutory notifications have been issued with respect to qualifications required for the post of vice-principal in government aided schools, which cannot be set at naught and especially because by its very language Rule 100(c) cannot come into application in the present case and nor can Rule 102 which is linked to Rule 100(c).

17. The next argument which is urged on behalf of Ms. Binu Chaudhary was that since she received a B.Ed degree in the year 2010 and hence was qualified as on the date of DPC being 27.1.2012, and was therefore rightly appointed, is an argument which does not merit acceptance in view of the letter of the Director of Education dated 16.5.2011 reproduced above, and which specifically required appointment of vice principal in the school w.e.f December, 2009 and therefore qualifications of December, 2009 have to be seen and not acquiring of qualifications subsequent to December, 2009. I may note that Ms. Binu Chaudhary has in no manner challenged this communication dated 16.5.2011 which was issued by the Director of Education to the school. Accordingly, I am to look into the eligibility qualifications for appointment of a vice-principal of an aided school being the Nutan Marathi Senior Secondary School only as of

December 2009 and when admittedly Ms. Binu Chaudhary did not have the qualification of B.Ed degree, and hence she is consequentially disentitled for being appointed as vice-principal.

18. The last argument which is urged on behalf of Ms. Binu Chaudhary is that she should not be prejudiced because there was no requirement of a B.Ed degree originally when she was appointed about 20 years earlier as PGT (painting), and in fact which qualification is not even required today for being appointed as PGT(painting). This argument has to be rejected for the reason that we have to look into qualifications for appointment not for a PGT in the present case but those qualifications which are required for being appointed as a vice-principal and for which post a B.Ed degree is required. The fact that even today there is no requirement of a B.Ed degree for appointment as PGT (painting) only supports the argument on behalf of Director of Education and Sh. Birpal Singh that there can be separate qualifications for separate posts and thus separate qualifications for being appointed as teacher/PGT and a vice-principal.

19. In view of the above discussion, the writ petition being W.P.(C) No. 7562/2012 will stand dismissed. The communications of the Director of Education dated 19.10.2012, 8.11.2012, 16.11.2012 are upheld. The

recommendation of the DPC dated 27.1.2012 for appointment of Ms. Binu Chaudhary as a vice-principal is illegal and hence quashed. The school in question M/s Nutan Marathi Senior Secondary School should now immediately conduct a fresh DPC within a period of six weeks from today for appointment of a vice-principal w.e.f December 2009 in terms of the Director of Education's letter dated 16.5.2011. Accordingly, WP(C) No. 502/2012 of Sh. Birpal Singh is allowed to the extent as stated above by directing conducting of the fresh DPC of the school and W.P.(C) No. 7562/2012 of Ms. Binu Chaudhary is dismissed and interim orders passed by this Court in any of these cases will merge in the present judgment.

NOVEMBER 01, 2013
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VALMIKI J. MEHTA, J.